

## MEMORANDUM

To: Vermont Electric Utilities, Renewable Energy Providers and Other Interested Persons

From: Judith C. Whitney, Deputy Clerk of the Board

Re: Memorandum from Second RGGI Workshop re the Establishment of a Process to Allocate Vermont's Budget of Carbon Credits, and Appointment of Consumer Trustee or Trustees pursuant to 30 V.S.A. § 255.

Date: April 18, 2008

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### I. Introduction and Background

On April 2, 2008, Public Service Board ("Board") staff, David Farnsworth, Edward McNamara, and Board intern, Zach Manganello, conducted a workshop to further discuss the activities contemplated in 30 V.S.A. Section 255, with the purpose of exploring how specific aspects of Section 255 would be implemented, and seeking guidance and recommendations from participants.<sup>1</sup> The purpose of this memo is to outline issues raised at the workshop that will be considered by workshop participants over the next few weeks as they participate in a cooperative effort to draft a "strawman" implementation proposal for 30 V.S.A. Section 255.

One of the main issues discussed at the April 2, 2008, workshop was an earlier proposal made by Green Mountain Power Corporation ("GMP") suggesting that a group of interested stakeholders be convened to develop a draft implementation plan for 30 V.S.A. Section 255 (i.e., "workgroup").<sup>2</sup> GMP noted that the workgroup should include a representative of the Vermont Department of Public Service ("Department"), and that GMP is itself prepared to participate. Participants agreed that this would be a productive approach. The Department asked that Board staff prepare a list of implementation issues that the workgroup would need to address.

A related issue discussed at the workshop was the recent passage and signing into law of S.209, legislation amending 30 V.S.A. Section 255. The group discussed these amendments, and

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<sup>1</sup>This was the second in a series of workshops organized to explore issues raised by 30 V.S.A. Section 255. The first workshop on this topic was held on November 8, 2007.

<sup>2</sup>See GMP Comments of December 14, 2007.

agreed that it would be helpful for Board staff to provide further clarification as to the implications of these changes to Section 255.

Below, Staff first set out a list of implementation issues necessary to the development of a structure to implement Vermont participation in the Regional Greenhouse Gas Initiative ("RGGI") under 30 V.S.A. Section 255. Second, Staff provide guidance on several legal points raised by the recent amendments to Section 255.

## II. Implementation Issues

What follows is a preliminary list of issues to be considered by the workgroup as it develops its proposal:

- Description of necessary trustee capabilities, and/or identification of potential trustee candidates.
- Trustee responsibilities, including:
  - Participation on behalf of Vermont in the RGGI auction.
  - Minimum reporting requirements.
  - Disbursement of funds associated with implementation costs and the fuel efficiency fund created under 30 V.S.A. Section 203a.
- Degree of Board oversight necessary.
- Other auditing requirements.
- Provisions beyond standard contract provisions that may be necessary.
- Automatic periodic review of initial structure.

## III. Staff Guidance re: Section 255.

Workshop participants discussed two issues that arise out of 30 V.S.A. § 255, as amended by S.209. The first issue is whether the Board has authority under Section 255 to develop a structure to allow: (1) payment to the fiscal agent or trustee; (2) payment to RGGI, Inc.; and (3) staff costs, with the remainder going to the all fuels efficiency utility. The second issue is whether the Board has authority under Section 255 to develop a structure that can accommodate a set-aside fund for voluntary renewables.<sup>3</sup>

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<sup>3</sup>For a detailed discussion of a Green Products Set-Aside, see *Issue Framing Memo from November 8, 2007, RGGI Workshop re the Establishment of a Process to Allocate Vermont's Budget of Carbon Credits, and Appointment of Consumer Trustee or Trustees pursuant to 30 V.S.A. § 255 issued on November 15, 2007*, at [http://www.state.vt.us/psb/document/RGGI/workshop\\_memo\\_nov15.pdf](http://www.state.vt.us/psb/document/RGGI/workshop_memo_nov15.pdf)

a. Background

Under 30 V.S.A. § 255, the Board is charged with implementing RGGI, and with appointing a trustee or trustees to manage Vermont's carbon credits. The following are preliminary conclusions of Board staff regarding the issues of whether the language in S.209 allows for some of the proceeds from sale of carbon credits to be applied toward certain costs associated with implementing RGGI, and whether a certain amount of allowances may be used for a set-aside account for voluntary renewables programs. These conclusions are preliminary only, given that they have been developed without the benefit of briefing by interested persons. Also, these preliminary conclusions are those of Board staff only, and do not necessarily reflect the conclusions that the Board itself might reach.

b. Program Costs

The Board has authority under Section 255 to develop a structure that allows the payment of certain costs incident to the implementation of RGGI in Vermont, namely, reasonable costs incurred by the trustee and Vermont's pro-rata share of the costs of the RGGI regional organization. Section 255(c) deals with the allocation of carbon credits, and provides that the allocation plan shall, to the extent feasible, "employ an administrative structure that will . . . provide funds to defray the reasonable costs of the program trustee or trustees and Vermont's pro-rata share of the costs of the RGGI regional organization."<sup>4</sup> Thus, the plain language of Section 255 permits the Board to develop a structure that utilizes some of the proceeds from sale of carbon credits to defray certain costs incidental to the implementation of the RGGI program. This would include the ability to provide payments to the trustee and RGGI, Inc., and the ability to defray the costs associated with staff participation necessitated by the RGGI process.

c. Set-Aside for Voluntary Renewables

The Board has authority under Section 255 to develop a structure that can accommodate a set-aside account for voluntary renewables programs. First, the set-aside structure can be implemented without drawing upon any of the "proceeds" of sale of carbon credits, and thus the language of Section 255(d), that "[p]roceeds from the sale of carbon credits shall be deposited into the fuel efficiency fund . . . ," need not apply. Second, given the focus of Section 255, as well as S.209's requirement that utilities establish voluntary green pricing programs, such a set-aside fund is necessarily implied in the goals of the allocation plan and the legislative findings and policies underlying Section 255.

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<sup>4</sup>30 V.S.A. § 255(c)(2)(B).